

REMARKS/ARGUMENTS

Reconsideration of the application is respectfully requested for the following reasons:

Rejection of Claims 17 and 19-25 Under 35 U.S.C. §103(a)

Claims 17 and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al (U.S. 5,739,552) in view of Kopf et al (U.S. 5,115,441). Applicants respectfully traverse this rejection since combination of Kimura et al. and Kopf et al fail to disclose and teach every element of the claimed invention.

Examiner is of the opinion that all element disclosed in Claims 17 and 22 of the claimed invention are disclosed by Kimura et al, except the transparent layer is composed of a semiconductor compound excluding Gap, but the Kopf et al. It is because that in Claim 2 of Kopf et al, Kopf et al disclosed an apparatus having a transparent layer (23) composed of a semiconductor compound excluding Gap. According to column 3, lines 35-37 and claim 2 of Kopf et al, the semiconductor layer (23) is a top electrode of the device of Kopf et al, and it is selected from the group consist of cadmium tin oxide and indium tin oxide. However, the transparent layer of the present invention is just a transparent layer used to help to maximize the overall light efficiency, but not function as a top electrode. Although the top electrode (23) of Kopf et al and the transparent layer of the present invention are transparent, but they don't mean because of their different function. According to MPEP 2111, the broadest reasonable interpretation of the claims

must also be consistent with the interpretation that those skilled in the art would reach. But it is obvious for people skilled in the art that the top electrode of LED is used to electrically connect the power source, but the transparent layer of LED is used to help to maximize the overall light efficiency, and they means different things. So it can be reach for those skilled in the art to interpret the top electrode (23) of Kopf et al as the transparent layer of the present invention. Therefore, the semiconductor layer (23) of Kopf et al and the transparent layer of the present invention mean different element of a LED device, and the feature “the transparent layer of the present invention is composed of a semiconductor compound excluding Gap” is not disclosed by Kopf et al. So even Kopf et al disclosed and taught that the top electrode is composed of a semiconductor compound excluding Gap, but it can not disclosed and taught that the transparent layer of the present invention is composed of a semiconductor compound excluding Gap. However in fact, what is disclosed in Claim 2 of Kopf et al is that the top electrode is selected from the group consisting of cadmium tin oxide and indium tin oxide, but it does not disclosed that the top electrode is composed of a semiconductor compound excluding Gap. Therefore, even Kimura et al is combined with Kopf et al, it can not disclosed and taught that the he transparent layer of the present invention is composed of a semiconductor compound excluding Gap. Therefore, the rejection of claims 17 and 22 under 35 U.S.C. 103(a) can be traversed.

Besides, Kimura et al is also failed to be combined with Kopf et al. It is because that the substrate of the Kimura et al is composed of GaP, but the substrate of Kopf et al is composed of the semiconductor compound excluding Gap. claim 1 and specification (col. 3, lines 48-51) of Kopf et al disclosed that substrate comprise a plurality of layers selected from Group III - V and Group II - VI compound semiconductors having nominal formula GaAs, InP, InGaAs,

InGaPAs, AlAs, AlGaAs and AlGaInAs, and it excludes the GaP. So what is composed of the substrate (GaP) in Kimura et al is what is excluded to be composed of the substrate in Kopf et al. Therefore, Kimura et al can not be combined with Kopf et al. So the rejection of claims 17 and 19-25 under 35 U.S.C. 103(a) can be traversed.

There is another reason why Kimura et al is failed to be combined with Kopf et al. According to the specification of Kimura et al, the Gap layer of Kimura et al is the p junction of n-p junction of the red and green LED (Fig. 5a and 5b). It obvious for those skilled in the art that the p junction (Gap layer) is different from the top electrode, and the art that the p junction can not be instead of the top electrode. According to MPEP 2111, it can be reach for those skilled in the art to interpret the top electrode (23) of Kopf et al as p junction of Kimura et al. In fact, Kopf et al does not disclose that the top electrode is composed of a semiconductor compound excluding Gap, and the p junction of n-p junction of the red and green LED (Fig. 5a and 5b) of Kimura et al can be instead of the Gap material. According to MPEP 2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. However according to foregoing reasons, Kimura et al is failed to be combined with Kopf et al under MPEP 2143. Therefore, The Examiner can not combine Kimura et al with Kopf et al, and the rejection of claims 17 and 19-25 under 35 U.S.C. 103(a) can be traversed.

Conclusion

In light of the above remarks to the claims, Applicant contends that Claims 17 and 19-25 are patentable thereover. The claims are in condition for favorable consideration and Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

This Amendment was prepared by Applicant, and is being submitted without substantive change by the undersigned Attorney.

Respectfully submitted,
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